

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
ASSIGNED ON BRIEFS FEBRUARY 15, 2008

**IN THE MATTER OF:
B.N.T. (d/o/b 6/7/95) and K.A.P. (d/o/b 1/26/00)**

**Direct Appeal from the Juvenile Court for Gibson County
No. 18652 Robert W. Newell, Judge**

No. W2007-01627-COA-R3-PT - Filed May 19, 2008

This is a termination of parental rights case. Mother/Appellant appeals the Order of the Gibson County Juvenile Court terminating her parental rights to her two minor children. Specifically, Appellant asserts that the grounds of abandonment, persistence of conditions and failure to substantially comply with the permanency plans are not supported by clear and convincing evidence in the record, and that termination of her parental rights is not in the best interests of the children. Because we find clear and convincing evidence in the record to support the grounds of failure to substantially comply with the permanency plans, and persistence of conditions, and clear and convincing evidence that termination is in the best interests of the children, we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Juvenile Court Affirmed

ALAN E. HIGHERS, P.J., W.S., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

Hillary L. Lawler, Trenton, TN, for Appellant

Robert E. Cooper, Jr., Attorney General and Reporter, Elizabeth C. Driver, Senior Counsel, Nashville, TN, for Appellee

OPINION

Tamatha Townsend (“Respondent,” or “Appellant”) is the mother of B.N.T. (d.o.b. 6/7/95) and K.A.P. (d.o.b. 1/26/00) (together, the “Children”). K.A.P. was born while Ms. Townsend was incarcerated on a forgery conviction.¹ B.N.T. was living with her maternal grandmother, Lorene Gabel, at the time of K.A.P.’s birth. Ms. Townsend then sent K.A.P. to live with Ms. Gabel, and signed a power-of-attorney, giving Ms. Gabel authority to make decisions for the Children.

Ms. Townsend was released from prison in August of 2000. Thereafter, Ms. Townsend moved into an apartment next door to her mother, and began taking care of her Children. However, this arrangement was short-lived. Ms. Townsend was returned to jail, where she remained incarcerated until approximately July of 2001. Shortly after her release, Ms. Townsend was again arrested and incarcerated on prostitution charges. This pattern of criminal conduct and incarceration continued until Ms. Townsend was incarcerated for forgery in January 2005.

The State of Tennessee Department of Children’s Services (“DCS,” or “Appellee”) first became involved in this case when it received a referral on or about January 13, 2003. On February 11, 2003, DCS filed a “Petition for Temporary Custody.” The Petition states that the Children “have been abandoned with their maternal grandmother...who does not have custody,” that Ms. Townsend’s whereabouts are unknown, and that her last contact with the Children was in December 2002. In response to DCS’s Petition, the trial court entered a “Protective Custody Order” on February 11, 2003. A hearing was held on January 12, 2003, at which the trial court found the Children to be dependent and neglected. On March 5, 2003, the trial court entered an “Interim Order,” placing temporary custody of the Children with Ms. Gabel.

On or about August 26, 2003, the trial court adjudicated William “Sonny” Preston to be the father of K.A.P.² By Order of October 2, 2003, the trial court changed temporary custody of the Children to Sonny Poston and Pamela Poston (K.A.P.’s paternal aunt), and granted Ms. Townsend supervised visitation. By petition of February 11, 2004, DCS moved the court to change temporary custody again. By “Interim Order” of February 26, 2004, the trial court found that Sonny Poston is “unwilling and unable” to care for the Children, and that Pamela Poston is not financially able to care for them. Consequently, the trial court placed custody of the Children with DCS. DCS then appointed Pamela Poston as the foster parent of both Children, so that she could qualify for financial assistance through DCS. The Children have remained in Ms. Poston’s home from that time.

On or about March 2, 2004, Permanency Plans were created for both Children. Ms. Townsend’s requirements under both plans were the same: (1) to address her drug and alcohol addiction by completing a mental health assessment, following the recommendations of the counselor, submitting to random drug screens, and attending Narcotics Anonymous and Alcoholics Anonymous meetings as recommended; (2) to demonstrate that she can financially support the

¹ The alleged father of B.N.T. is Alex Martinez. Mr. Martinez’s parental rights to B.N.T. were terminated by Order of June 21, 2007. Mr. Martinez is not a party to this appeal.

² Mr. Poston’s parental rights were terminated by the July 21, 2007 Order, *see infra*. He is not a party to this appeal.

Children by providing documentation of employment to DCS; (3) to provide stable housing for the Children, and to provide written documentation of paid utilities and rent to DCS; (4) to comply with her probation, not to be incarcerated, and to pay all fines due. The initial goal of the respective permanency plans was reunification with parent and/or adoption. On or about August 9, 2004, the goal for both Children was changed to adoption. The trial court has approved and ratified each of the permanency plans created during the course of these proceedings.

On July 7, 2006, DCS filed a “Petition to Terminate Parental Rights” against Ms. Townsend, Alex Montez, a.k.a. Alex Martinez, William “Sonny” Poston, Jr., and unknown father of B.N.T.³ As grounds for termination, DCS alleges, in relevant part, as follows:

18. Pursuant to Tennessee Code Annotated section 36-1-113(g)(1), the Department submits that grounds for Termination of Parental Rights exist[] based on abandonment by the parent or guardian, as defined in Tennessee Code Annotated section 36-1-102, because:

a) Tamatha Townsend has abandoned the children in that Ms. Townsend has willfully failed to support or make reasonable payments toward the support of the children for four (4) consecutive months immediately preceding her incarceration.

b) Tamatha Townsend has abandoned the children in that Ms. Townsend willfully failed to visit with the children for four (4) consecutive months immediately preceding her incarceration.

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e) The children have been removed from the home of the parents as a result of a petition filed in the juvenile court in which the children were found to be dependent and neglected children, as defined in Tennessee Code Annotated section 37-1-102, and the children were placed in the custody of the State of Tennessee, Department of Children’s Services; the juvenile court found that the State of Tennessee, Department of Children’s Services made reasonable efforts to prevent the children’s removal or that the circumstances of the children’s situation prevented reasonable efforts from being made prior to the children’s removal; and for a period of four (4) months following the removal, the State of Tennessee, Department of Children’s Services has made reasonable efforts to assist the parents to establish a suitable home for the children, but the parents have made no reasonable efforts to provide a suitable home and have

³ DCS initially filed its Petition to Terminate Parental Rights in this matter on or about May 5, 2005. That Petition was dismissed without prejudice at a hearing on February 28, 2006.

demonstrated a lack of concern for the children to such a degree that it appears unlikely that they will be able to provide a suitable home for the children at an early date.

f) Compliance with Tennessee Code Annotated section 37-2-403(a)(2)(B) was established by providing notice to the parents to appear at court reviews of the permanency plans and the parents were explained and provided a copy of the law relating to abandonment contained in Tennessee Code Annotated section 36-1-102. They were explained that the consequences of failure to visit or support the children will be termination of parental rights.

19. Pursuant to Tennessee Code Annotated section 36-1-113(g)(2), the Department submits that grounds for Termination of Parental Rights exist[] as to Tamatha Townsend...based upon substantial noncompliance by the parents with the statement of responsibilities in a permanency plan or plan of care pursuant to the provision of title 37, chapter 2, part 4, because:

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b) Tamatha Townsend...[has] not completed a mental health intake to address any alcohol and drug needs, [she has] not submitted to random drug screens and [has] not attended NA or AA meetings pursuant to the permanency plan....

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d) Tamatha Townsend...[has] not completed parenting counseling pursuant to the permanency plan.

e) Tamatha Townsend has not complied with her probation rules and was incarcerated in violation of the permanency plan.

20. Pursuant to Tennessee Code Annotated section 36-1-113(g)(3)(A)(i-iii), the Department submits that grounds for Termination of Parental Rights exist[] as to Tamatha Townsend...because the children have been removed from the home of the parents by order of this Court for more than six (6) months and,

a) the conditions which led to the children's removal or other conditions which in all reasonable probability would cause the children to be subjected to further abuse or neglect which, therefore, prevent the children's safe return to the care of the parents, still persist; and,

- b) there is little likelihood that these conditions will be remedied at an early date so that the children can be safely returned to the parents in the near future; and,
- c) the continuation of the parent and child relationship greatly diminishes the children's chances of early integration into a safe, stable and permanent home.

Following a hearing on December 12, 2006, the trial court deferred its decision until January 2007 in order to review the case, and so that an independent, psychological evaluation of B.N.T. could be completed. The trial court heard further argument on February 20, 2007, April 11, 2007, and May 9, 2007. By Order of June 21, 2007, the trial court terminated the parental rights of Alex Montez, a.k.a. Alex Martinez, Tamatha Townsend, and Sonny Poston to these Children. The June 21, 2007 Order reads, in relevant part, as follows:

The children were found to be dependent and neglected by the Gibson County Juvenile Court and placed in the custody of the Department of Children's Services ("Department") on the 10th day of February, 2004. The Department made reasonable efforts to prevent removal of the minor children at that time. The Department has made reasonable efforts to assist the mother, Tamatha Townsend, to establish a suitable home for the children for a period of four months following the removal of the children.

The Respondent, Tamatha Townsend, was incarcerated four months at the time of the filing of this petition and was engaged in conduct prior to incarceration which exhibited a wanton disregard for the welfare of the children.

The Department of Children's Services alleged multiple grounds against each of the parents for the termination of parental rights and further alleged that it's in the best interest and welfare of the children that the rights of the parents be terminated. The grounds alleged consist of abandonment as defined in T.C.A. §36-1-102, failure to substantially comply with the permanency plans, persistence of conditions....

The Court incorporates by reference the grounds as set out in the memorandum of law and written arguments by the petitioners and the memorandum of law in response to petitioner's memorandum and written argument by the defendant. Those documents will be incorporated herein by reference.

The Court would be hard pressed to consider only the abandonment grounds due to the abandonment partially through incarceration of the mother, but the mother has a long history of revolving in and out of prison, admitted prostitution, drug use and

criminal activity when not incarcerated and at this time has yet to show she can consistently remain out of prison which shows a wanton disregard for the welfare of the children. Further the mother failed to visit or support the minor children in the four months prior to her incarceration. . . .

The Court finds clear and convincing evidence that grounds of persistent conditions found in T.C.A. §36-1-113(g) were proved by the department of children's services against all of the parents. The Court adjudicated the minor children dependent and neglected due to the mother's incarceration. . . .

It is in the best interest of the children for the parental rights to be terminated due to the fact the children are in a foster home and the foster parent has expressed a willingness to adopt the minor children. Dr. Heston, who did an evaluation of the minor child, [BNT], indicated it would be detrimental for her to be removed from the home of the foster parent at this time; the parents have failed to consistently visit with the minor children or to pay child support.

Therefore, based on case law, facts in evidence, the Court finds clear and convincing evidence that the grounds exist to terminate parental rights of the parents and that it is in the best interest and welfare of the children.

* * *

The Court further finds that the State of Tennessee, Department of Children's Services has used reasonable efforts to finalize the children's Permanency Plan, because the State has pursued termination of parental rights in order to free the children for adoption, and also provided appropriate placement for the children, as well as educational, medical and dental services.

Ms. Townsend is the sole Appellant in this case. She raises two issues for review, as stated in her brief, to wit:

I. Whether the trial court erred in determining that statutory grounds exist to terminate parental rights of Tamatha Townsend.

II. Whether the trial court erred in determining that [] it is in the best interest and welfare of the children to terminate the parental rights of Tamatha Townsend.

T.C.A. § 36-1-113(c) (Supp. 2007) governs termination of parental rights and requires that such termination be based upon:

- (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
- (2) That termination of the parent's or guardian's rights is in the best interest of the child.

The standard for the termination of parental rights is well settled. The United States Supreme Court has recognized the important nature of cases involving the termination of parental rights, stating that “[f]ew consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745 (1982) (Rehnquist, J., dissenting)). Accordingly, “the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment.” *Id.* The constitutional protections of the parent-child relationship require certain safeguards before the relationship can be severed. *See O’Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn.Ct.App.1995) (rev’d on other grounds, *In re: Swanson*, 2 S.W.3d 180 (Tenn.1999)).

As a safeguard, courts are required to apply the heightened “clear and convincing” proof standard. *See Santosky*, 455 U.S. at 769; *O’Daniel*, 905 S.W.2d at 186. To justify the termination of parental rights, the grounds for termination must be established by clear and convincing evidence. *See* T.C.A. § 36-1-113(c)(1) (2005); *State Dep’t of Human Servs. v. Defriece*, 937 S.W.2d 954, 960 (Tenn.Ct.App.1996). Although it does not require as much certainty as the “beyond a reasonable doubt” standard, the “clear and convincing evidence” standard is more exacting than the “preponderance of the evidence” standard. *O’Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn.Ct.App.1995); *Brandon v. Wright*, 838 S.W.2d 532, 536 (Tenn.Ct.App.1992). In order to be clear and convincing, evidence must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n. 3 (Tenn.1992); *O’Daniel v. Messier*, 905 S.W.2d at 188. Such evidence should produce in the fact-finder’s mind a firm belief or conviction as to the truth of the allegations sought to be established. *O’Daniel v. Messier*, 905 S.W.2d at 188; *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn.Ct.App.1985). In contrast to the preponderance of the evidence standard, clear and convincing evidence should demonstrate that the truth of the facts asserted is “highly probable” as opposed to merely “more probable” than not. *Lettner v. Plummer*, 559 S.W.2d 785, 787 (Tenn.1977); *Goldsmith v. Roberts*, 622 S.W.2d 438, 441 (Tenn.Ct.App.1981); *Brandon v. Wright*, 838 S.W.2d at 536.

Grounds for Termination

The trial court terminated Ms. Townsend's parental rights on grounds of abandonment, persistence of conditions, and failure to substantially comply with the requirements of the permanency plans. These grounds are codified at T.C.A. § 36-1-113(g) (Supp. 2007):

- (1) Abandonment by the parent or guardian, as defined in §36-1-102, has occurred;
- (2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan....
- (3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
 - (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
 - (B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
 - (C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

T.C.A. § 36-1-102 defines “abandonment,” in pertinent part, as follows:

- (1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:
 - (i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;
 - (ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the

department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date;

* * *

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child;

* * *

(B) For purposes of this subdivision (1), "token support" means that the support, under the circumstances of the individual case, is insignificant given the parent's means;

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

(D) For purposes of this subdivision (1), "willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" means the willful failure, for a period of four (4) consecutive

months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child;

(E) For purposes of this subdivision (1), "willfully failed to visit" means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation;

(F) Abandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child;

T.C.A. § 36-1-102.

Abandonment

The finding of abandonment on the part of Ms. Townsend is complicated in this particular case due to the fact that Ms. Townsend has been incarcerated in different jails for the vast majority of the time these Children have been in DCS custody. Moreover, the record is not clear as to whether there has been a period of four (4) months in which Ms. Townsend has been out of jail. Consequently, the grounds of abandonment under T.C.A. § 36-1-102(1)(A)(iv), *see supra*, have not been met in this case. However, during her brief furloughs from jail, Ms. Townsend admits that she neither visited, nor tried to contact the Children, to wit:

Q [to Ms. Townsend]. And during that time [i.e. the time between December 2, 2004 and January 10, 2005 when Ms. Townsend was out of jail] did you go see the girls?

A. No.

Q. Try and call your girls?

A. No.

Q. Why not?

A. I was on drugs. I had a drug problem.

Q. And your first instinct wasn't to check on your children?

A. No.

Q. Wasn't even thinking about your children then, were you?

A. No.

Although the statutory criteria for abandonment cannot be proven by clear and convincing evidence, the fact that Ms. Townsend demonstrated no thought for her Children during those brief periods of freedom shows a blatant disregard for her role as their parent. The fact that Ms. Townsend's priority was to procure drugs demonstrates the depth of her problem, to wit:

Q. And during those few days, you never went and visited your children?

A. No, because I was high.

Failure to Substantially Comply with the Permanency Plans

_____ The trial court also terminated Ms. Townsend's parental rights on the grounds of failure to substantially comply with the permanency plans. As set out above, Ms. Townsend's responsibilities under these plans were to: (1) to address her drug and alcohol addiction by completing a mental health assessment, following the recommendations of the counselor, submitting to random drug screens, and attending Narcotics Anonymous and Alcoholics Anonymous meetings as recommended; (2) to demonstrate that she can financially support the Children by providing documentation of employment to DCS; (3) to provide stable housing for the Children, and to provide written documentation of paid utilities and rent to DCS; (4) to comply with her probation, not to be incarcerated, and to pay all fines due.

A trial court must find that the requirements of a permanency plan are "reasonable and related to remedying the conditions which necessitate foster care placement." T.C.A. § 37-2-403(a)(2)(C) (Supp. 2007). This finding must be made in conjunction with the determination of substantial noncompliance under § 36-1-113(g)(2). *See In re Valentine*, 79 S.W.3d 539 (Tenn. 2002). In the instant case, it appears that no such finding was made by the trial court. Consequently, this Court must make such determination *de novo* upon the record. *Id.* at 547. Turning to the record, we conclude that the above requirements were reasonable and related to remedying the conditions that necessitating foster care placement in this case. We now turn to the question of whether Ms. Townsend failed to substantially comply with these requirements.

The record reveals that, after the permanency plans were developed, Ms. Townsend made no efforts to comply for approximately two years. Although Ms. Townsend has since completed some drug and alcohol abuse programs in jail, she has not demonstrated consistent sobriety. Furthermore, because of her choices, Ms. Townsend has not been able to maintain stable employment. Consequently, she cannot demonstrate an ability to provide for these Children. Ms. Townsend's choices have resulted in her nearly continuous incarceration, and she has failed to demonstrate the ability to provide stable housing. From the record before us, Ms. Townsend has failed to substantially comply with the reasonable responsibilities under the permanency plans.

Persistence of Conditions

These Children had been in DCS custody for over three years at the time of the hearing in this case. During this time, Ms. Townsend has made no serious efforts toward stability. She has remained in jail for the majority of this time due to her own decision to continue drug use, and criminal activity. As discussed above, she has failed to procure and maintain either stable employment, or housing. Furthermore, while Ms. Townsend claims to have conquered her drug habit, there is nothing in the record from which to conclude that this claim will be substantiated outside the prison system. In fact, her brief periods of freedom have shown just the opposite. Rather than working toward stability, Ms. Townsend has chosen to seek drugs by any means possible. A fact that has resulted in her continued incarceration and separation from these Children.

Moreover, the record indicates that, when Ms. Townsend is released from prison, she must attend a mandatory, six-month, in-patient drug rehabilitation and transition program. Although Ms. Townsend would be able to visit with the Children during this time, they would not be able to live with her. Consequently, it would be at least eleven months (from the date of the hearing in this case) before Ms. Townsend could begin the process of procuring stable and suitable housing. This situation would prevent the Children from early integration into a safe and stable home. Ms. Poston, whom the Children have lived with for over three years, states her intention to seek adoption. Given the fact that Ms. Townsend still has much work to do, and the fact that more time would be necessary to prove the efficacy of any changes she may make, to prolong the parent-child relationship in this case, would result in further detriment to these Children.

Reasonable Efforts

In her brief, Ms. Townsend argues that DCS did not make reasonable efforts before petitioning for termination of her parental rights. Under T.C.A. § 37-1-166(a) (2005), the court is required to determine whether DCS made “reasonable efforts” for reunification of the family. T.C.A. § 37-1-166(g)(1) defines “reasonable efforts” as follows:

As used in this section, “reasonable efforts” means the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family. In determining reasonable efforts to be made with respect to the child, as described in this subdivision, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

Nevertheless, reunification of a family is a two-way street, and the law does not require DCS to carry the entire burden of this goal. The record indicates that Ms. Townsend received notification concerning these proceedings and that she had the opportunity to participate. The record further indicates that a DCS case manager visited Ms. Townsend in jail and provided her with a copy of the permanency plans. Within the confines of its own resources and the specific circumstances of this case (i.e. Ms. Townsend’s nearly constant incarceration), it is the opinion of this Court that DCS has made reasonable efforts in this case. Unfortunately, Ms. Townsend, by virtue of her incarceration and other circumstances, has been unable to reciprocate in the process of reunification. From the

record before us, we conclude that there is clear and convincing evidence to support the trial court's finding that Ms. Townsend's parental rights to these Children should be terminated on the grounds of failure to substantially comply with the permanency plans, and persistence of conditions. Furthermore, there is ample evidence in the record to support a finding that Ms. Townsend's activities before incarceration, during incarceration, and during probation demonstrate a wanton disregard for her own welfare as well as that of the Children.

Best Interest

After a finding that the grounds for termination have been established by clear and convincing evidence, the court must then determine if termination is in the best interest of the child. T.C.A. § 36-1-113(c)(2). Section 36-1-113(i) (Supp. 2007) enumerates the following factors courts are to consider in making the best interest determination:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

This list is not exhaustive, and the statute does not require the court to find the existence of every factor before concluding that termination is in a child's best interest. *State v. T.S.W.*, No. M2001-01735-COA-R3-JV, 2002 Tenn.App. LEXIS 340, at *9 (Tenn. Ct. App. May 10, 2002).

Turning to the record, we find clear and convincing evidence that, despite numerous opportunities, Ms. Townsend has failed to effect permanent change in her life. There is no proof that she will be able to resist drug use outside the prison system, that she will be able to maintain employment, or stable housing. Consequently, it is the opinion of this Court that she is neither able to care for these Children presently, nor in the foreseeable future. Furthermore, these Children have been in DCS custody for over three years. The evidence is that the Children are currently residing with a foster parent who wishes to adopt. Given the fact that Ms. Townsend has not been able to make necessary changes in her life, much less demonstrate that such changes are permanent, we find that to prolong her involvement in these Children's lives will only function to keep the Children in a state of pendency. Consequently, we find that terminating Ms. Townsend's parental rights is in the best interests of the Children. So doing will allow them to integrate into a permanent and stable home where, hopefully, they will flourish.

For the foregoing reasons, we affirm the Order of the trial court, terminating the parental rights of Ms. Townsend to these Children. Costs of this appeal are assessed against the Appellant, Tamatha Townsend, and her surety, for which execution may issue if necessary.

ALAN E. HIGHERS, P.J., W.S.